ISLAM'S ATTITUDE TOWARDS WOMEN AND ORPHANS

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With an Introduction by

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TO

THE LOVING MEMORY OF MY MOTHER

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FOREWORD

TOWARDS the end of 1927 the British Muslim Society, London, invited me to deliver a lecture on "Islam's Attitude towards Women and Orphans." I thought the subject was admirable and of particular interest to all students of comparative religions and sociology. I gladly accepted the invitation, and at one of the winter-session meetings of the Society the lecture was delivered.

Subsequently, the lecture was published as a series of articles in the *Islamic Review*, commencing from July 1928.

In its present form, the thesis owes its existence to the patronage and generosity of the late Hajee Usoof Mohammed Sulaiman Botawala Charities Fund, of Rander, District Surat, India, which has defrayed the expenses of its publication. I was exceedingly fortunate in meeting Mr. Ebrahim Usoof Botawala, who was then on a short visit to London. I was able to impress him with the necessity of bringing out the lecture in the form of a booklet for free distribution in Great Britain and in India. He at once directed the manager of his father's well-known Trust in Bombay to pay the expenses of its publication, with the result that it is now before the reading public of Great Britain and India.

My sole object in dealing with the subject is that it is of perennial interest, especially so at the present moment when the dawn of a new era is visible in all Islamic countries. To the West, Islam has never been properly explained. Europe has never fully appreciated the beauties of Islam—the services which it has rendered to the spiritual, social, and cultural

development of the world. A thick crust of misconception envelops the social aspect of Islam. The Woking Mission, through the inspiration and genius of its great founder, Al-Hajj Khwāja Kamālu 'l-Dīn, has been untiring in its efforts to break through such misconceptions, and often at times to destroy wilful misrepresentation. Our efforts, small as they have been and are, have resulted in an appreciable removal of ignorance about things Islamic. By the publication of this little volume I sincerely hope that it will tend to vindicate the teachings of the Holy Qur-án and the great Arabian Prophet—that in its treatment of woman Islam stands far and above all other religions and social systems. I have laid some stress on the legal aspect of the question, simply because the true criterion for comparative judgment consists of the rights and remedies which the law bestows on woman. In discussing the status of woman under Islam, I have not dealt with the subject from the standpoint of any particular school of thought (such as the *Sunnī* or the *Shī'ah*), but have taken a broad view of the subject, explaining the law as is to be found in the Qur-án and in the sayings of the Prophet. This book, it is submitted, has been written in a non-sectarian spirit—that is, the true spirit of Islam.

If I succeed in removing some of those chronic misconceptions about Islam reghant in the West in particular and the world in general, my efforts will not have been in vain.

I owe my thanks to Al-Hajj Lord Headley (Al-Farooq) for writing the Introduction to this little volume. Lord Headley more than any other British Muslim appreciates the social services of Islam, and as such his Introduction deserves careful perusal.

To Mr. Abdul Majid, Acting Imam of the Mosque, Woking, Surrey, England, I owe my thanks for many helpful suggestions, and also for correcting the proofs and looking after the publication generally. I may add that without his assistance the

appearance of this little volume would have been unduly delayed. I carry with me the fondest recollections of my association with him during my sojourn in England.

To the Librarian and Assistant Librarian of the Honourable Society of the Inner Temple, London, I owe my thanks for helping me generally in the writing of this book.

Finally, I must thank Mr. Ebrahim Usoof Botawala for so kindly responding to our appeal. In him the Rander Sunni Muslim Community has an enterprising member who has set a worthy example by encouraging the dissemination of Islamic teachings. He has proved himself to be a true friend of Islam. I sincerely hope that his worthy example will be emulated by others.

C. A. SOORMA.

INTRODUCTION

I HAVE perused with great interest and enlightenment to myself the essay on "Islam's Attitude towards Women and Orphans" which Mr. C. A. Soorma has recently compiled.

It does not take long to ascertain that the author has been at great pains to collect information from many sources, the bibliography including excerpts from the works of the late Ameer Ali, Blackstone's *Commentaries*, Lecky's *History of European Morals*, the works of John Milton, Mayne, Hunter, Buhler's *Laws of Manu*, Mulla's *Principles of Hindu Law and Principles of Mahomedan Law*, and many others.

I welcome the appearance of this valuable addition to the literature on a subject which is just now attracting very much interest in the West. There is, I think, very little doubt that Islam is spreading westward—a broadminded view of matters religious is marching in step with scientific discovery. The "necessity" for a belief in the dogmas of Christianity, the creations of monks and priests three hundred years after Christ's time, is no longer regarded seriously by thoughtful and reasonable people.

In the West there appears to me to be a healthy desire to sweep away all quite non-essential improbabilities from religion. No reasonable person now thinks that he will "perish everlastingly," or be cast into outer darkness where there will be "weeping and gnashing of teeth" merely because he fails to believe in the Divinity of Christ, the Trinity, the Sacra-

ments, the Atonement and the "Immaculate Conception," and you would find it hard to convince any educated person that no prayers could possibly reach Almighty God except "through Jesus Christ our Lord." My belief is, and always has been, ever since I could think at all, that even supposing Moses and Christ and Muhammad—all of Blessed Memory—had never existed at all, my earnest prayers to my Almighty Father would have reached His ears just the same. Do I need introductions to the Author of my being? Will God cease to listen because there is no Prophet present?

Such thoughts as these convince me that the mind of the West, having discarded the man-made dogmas, is in a "receptive" condition. Some of the old scientists were wont to observe that "Nature abhors a vacuum," and looking at it in this way it may well be that the Western mind is ready to give credence to a religion in which the fairy tales and improbabilities are reduced to a minimum. Islam stands forth as a beacon light. Worship the one and only God, Allah our Protector and Nourisher. Surrender yourself to His Almighty Will, and try to be good and kind to all your fellow-creatures.

No more is required of the Muslim, whose spirit is guided by His Lord in Heaven, and the beautiful instructions given through the agency of Moses, Christ and Muhammad and the other Prophets from time to time divinely inspired by the Almighty.

Therefore, any instruction or writing which tends towards the receptivity of Islam in the West at the present favourable moment is worthy of the strongest encouragement and support. We should strike whilst the iron is hot. I consider that Mr. Soorma's work, backed up by the evidence of the well-chosen excerpts from various high authorities, is well calculated to remove many of the false ideas which have been spread about concerning the treatment of women under Islam.

By showing up such fallacies as "Muslims worship Muhammad," "Muslims have to marry four wives," "Women have no souls," and "Women are not allowed inside Mosques," we are paving the way to a better understanding of what Islam really means, and showing how suitable it is as the religion or binding force of any God-fearing and self-respecting nation.

HEADLEY (AL-FAROOQ).

CHAPTER I

WOMEN UNDER ROMAN LAW

PERHAPS there is no other aspect of Islam which has been so bitterly—and wrongly—criticized, as its attitude towards women. Islam has been accused of having degraded woman; it is attacked as having reduced her status, socially, morally and spiritually; and above all, it is criticized for not having given to woman her rightful place as man's comrade and companion in life. To an unprejudiced student, however, the facts appear to be otherwise. A comparative study of woman under different religious and social systems will enable us to appreciate the great services rendered by Islam in raising her status, legally and socially, and with this object in view I now propose to sketch briefly the story of woman from historical times to the advent of Islam. I shall begin this most interesting study with the story of woman under Roman Law.

Those who are familiar with Roman history know that the Roman family was based on the paternal power or *patria potestas*. As an institution, it is older than the State and formed an *imperium in imperio*. The head of the family was its sole representative, and he alone had any *locus standi* in the Councils of the State. Under Roman Law a daughter, by marrying and entering into another household, became subject to a different authority. Legally, she ceased to be a member of her father's family. Her children, similarly, became strangers to her father's hearth, and therefore no legal relationship existed between them and their grandfather's family.

the Romans —

was that of a daughter: "If a wife

usus, or prescription. It was effected by a

the possession of a wife for a *whole*

[illegible] *Text-book of Roman Law*, pp. 102–3)

[illegible] the looseness of the tie

[illegible]

[illegible]

[illegible] vol. ii. pp. 14–19).

[illegible]

and luxury in many [illegible]

[illegible]

[illegible] the poets and the colleges of the [illegible] realized the Roman woman by putting her [illegible] pedestal, but as a matter of fact she never did occupy that eminent position.

To sum up the status of the Roman woman, we observe the following characteristics:

(1) No woman could live without a guardian.

(2) When married, she was under the perpetual *tutelage* of a man who exercised *patria potestas* over her.

(3) No marriage could take place without the consent of the father.

(4) In many times a father could even kill his son or daughter for any slight offence or misconduct.

(5) She became her husband's property in the truest sense of the term, being sold and conveyed in *Coemptio in manum* in much the same manner as goods were sold and delivered by means of "the copper and the scales."

[illegible]

adultery

[illegible]

not otherwise

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

CHAPTER II

WOMEN IN GREECE

When we [illegible] Greek [illegible] that [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

It seems that the Greek [illegible] women [illegible] mistress, who is assisted by her [illegible] [illegible] and spinning the other household [illegible] [illegible] the house [illegible] wealthier women seldom went out, and never except when accompanied by a female slave. They never attended any public functions, received male visitors, except in the presence of their [illegible]. Becky says that after the age of [illegible] the position of the Greek woman was [illegible] fewer [illegible]. She, like her Roman sister, was under a perpetual [illegible] [illegible] her parents who disposed of her in [illegible]

then to her husband and in the days of her widowhood to her sons. In cases of *inheritance* her male relatives were preferred to her. According to Westermarck there also existed a general notion that he was naturally more vicious, more addicted to envy, dishonest, evil-speaking, and wanton than the man. Even Plutarch, who was together with children and servants and little better than a slave, the property of mankind, the circle was narrower to the same. Euripides, the great dramatist, put into the mouth of his Medea the remark that "Women are important for good but clever contrivers of all evil." Lecky, *op. cit.* vol. ii. p. 16. Westermarck, *Origin and Development of the Moral Ideas*, vol. i. p. 662.

Contrasted with the virtuous Greek wife was the brilliant and polished courtesan. Dancing and education were mostly confined to the *hetaerae*. The Athenian youth had to be entered into the mysteries of Cypris by Lais of Corinth and Leontium. Mistresses were also become notorious for their circles of admirers, who gladly spent their hard-won drachmas.

Gathering around them the most brilliant artists, poets, historians, and philosophers, the Greek courtesan displayed an exactly opposite influence upon the intellectual and aesthetic life of her time. Not only did she become the centre of a literary and artistic coterie, but she was the mistress of Alcibiades, Pericles, and Aspasia, and the friend of Socrates and Plato. Her influence was the powerful lever of Pericles, while Socrates believed in her, and, as Plato tells us, introduced her into his Dialogues. Lecky, *op. cit.* vol. ii. p. 10.

In Sparta, however, women were not expected to have little to do with children, but were to be strong, healthy, and fit for the State, with the result that a proportion of women became distinguished for their prowess. It was a saying of Lycurgus that the Spartan women should be the mothers of men, and that their virtue was to be proved in their power to produce good soldiers for the State. Lecky, *op. cit.* p. [illegible]

CHAPTER III

WOMEN IN CHINA AND PERSIA

[illegible] been abolished in China.

[illegible] law relating to divorce, [illegible] granted in case of [illegible] or when the [illegible] offence the aggrieved [illegible] wife and her parents at he [illegible] should the woman not be [illegible] may drive her [illegible] provided he has not [illegible] sell her to the guilty man [illegible] dissolved by mutual agreement and the husband is entitled to a divorce when the wife

[illegible] making her [illegible]

[illegible]

[illegible] to the family [illegible] to retain the wife.

Naturally [illegible] [illegible] several [illegible] [illegible] of these years divorces, [illegible] husband. So likewise when the [illegible] [illegible] return [illegible] contribution [illegible] (Howard *op. cit.*, pp. 235–237).

Formerly in Japan women was [illegible] and treated as a common [illegible], but [illegible] education has now raised her status and she is now called "the honourable lady of the house." The law of [illegible] in Japan is regulated according to the principles of Western law.

Although the *Zoroastrian* Vase speaks of a holy woman as being "mean in good thought, good words and good deeds, well principled and obedient to her husband," the history of Persia is another example of the depravity of the times. The great reforms of Zoroaster had gone by the board and the morals of Iran had degenerated to an unspeakable extent.

"The climax was reached when Mazdak, in the beginning of the sixth century of the Christian era, bade all men to be

[illegible]

[illegible] Persian poets. Firdausi and Nizami [illegible] praised of women in Persia before the advent of Islam. These writings prove conclusively the great social services rendered by Islam in elevating the status of woman in Iran.

CHAPTER IV

WOMEN UNDER BUDDHISM

Buddhism which claims, and perhaps rightly, to be a high ethical and monastic order, has not assigned to woman any definite place, nor has it recognized the equality of the sexes. It has been very little toward the elevation of the position of woman. The life of Gautama Buddha shows that he could not find in woman a helpmate and a comrade. The mere fact that Buddha could not attain Nirvana while in the company of his beautiful wife and surrounded by family ties, clearly indicates the inferiority of woman as man's better half and partner in life. What a gulf yawns in this respect between the great Gautama and the Prophet Mohammed. The prophet Ameena found in his aged wife Khadeja solace and comfort at the most critical moment of his life.

Buddhism teaches asceticism and monasticism. It also lays great stress on celibacy. Buddha succeeded in removing all distinctions of caste which flourished and still flourishes under Brahminism, but he apparently left the question of the relation of the sexes somewhat severely alone. According to Westermarck, "To the Buddhist women are of all the snares which the tempter has spread for men the most dangerous; in women are embodied all the powers of infatuation which bind the mind of the world". (Westermarck *op. cit.* vol. 1, p. 662)

According to yet another authority, a very learned jurist in Burmese Buddhist Law, the late U May Oung, "the very idea of wedlock and its attendant worldly life is opposed to the ultimate end of Buddhism—the annihilation of Desire,

and notwithstanding that the Buddha in his discourses to [illegible] laid down [illegible] to be observed by married [illegible] even then [illegible] was exhorted to impress upon his hearers the need for keeping in mind the spiritual [illegible] lines which [illegible] who supports his father, mother, wife and children [illegible] indicates the [illegible] which [illegible] involve [illegible] Max [illegible] *[illegible]* [illegible]

But even Buddha could not change human nature. His teachings about the highest moral and spiritual, lack that fundamental [illegible] human nature which a social reformer ought to possess. It is [illegible] for a would-be reformer to speak always in terms of high idealism and ethics without laying down the law as regards the necessary relationship of the sexes. That is why, although Buddha himself extolled celibacy, we find Buddhists after his death enjoying all the bliss and happiness of matrimony. Had it been otherwise, it is obvious that Buddhism could not have spread so rapidly and extensively as to cover nearly half the world's total population.

Polygamy and concubinage are sanctioned by Buddhist customary law and no legal restrictions are placed on the number of wives a man might have. In Burma which is a Buddhist country, the customary law is derived mainly from the laws of Manu, the Rishi, who was a Brahmin. The various *Dhammathats*, the chief of which is the *Manugye*, lay down elaborate rules as regards marriage, divorce, inheritance, etc. Local customs, undoubtedly have influenced the original character of the Laws of Manu with the result that in Burma the status of woman is much higher than among the Hindus. But even then up till a few years ago the position of woman was, comparatively speaking, very low. In this connection, the learned author above cited, says: "Many kings of Burma, in their anxiety to preserve dynastic purity, were guilty of

[illegible] cases which would certainly not be tolerated at the present day and which even in the days gone by were confined to the royal family. [illegible] marriage between uncle and niece, nephew and [illegible] half brother and half sister, was permitted, [illegible] marriage between full brother and sister. In [illegible], however, of marriage with a brother's widow, common in the case of kings and chiefs, others followed their example to a certain extent, and instances have been known at the present day. On the other hand, marriage with a deceased wife's sister—almost in all cases a younger sister—is considered most proper, the chief reason being that the children will not be given a stranger as stepmother. As regards cousins, generally speaking, union with agnates is strongly deprecated, while that with other cognates is not looked upon with disfavour, provided the woman is on the same line as the man or below it. The writer has come across instances of a man *marrying* his deceased wife's mother, and another his deceased son's wife—but such have been very properly looked down upon. No case has arisen in which the validity of a marriage has been questioned on the ground of consanguinity or affinity, and when one does a considerable body of evidence will have to be led to prove prevailing customs", (May Oung, *op. cit.*, Part I, p. 5).

I am glad to admit, however, that with greater female education in Burma, women have made, and are now making, considerable headway. They have always fought for their rights and have obtained them. Thus we see that the laws of divorce, for instance, are just and fair. The husband cannot divorce the wife at will or "by caprice". Divorce by mutual consent is very common. Again, their laws of inheritance are equitable, the women sharing equally with men. In all these respects, as we shall see, the Burmese women are better placed and protected than the Hindu women.

CHAPTER V

WOMEN UNDER HINDUISM

[illegible] of woman under Hindu Law

[illegible]

[illegible] India among Hindus) —

[illegible] Manu, v. 147.

[illegible] must be subject to her father, [illegible] and when her lord is dead to [illegible] must never be independent [illegible]

[illegible] separate herself from her father, [illegible] her husband's) families [illegible]

[illegible] may give her, or her brother [illegible] ion, she shall obey as long [illegible] Manu, v. 151.

[illegible]

(Manu, ix. 14)

conduct", (Manu, ix. 17)

the subject is as follows:—

[illegible] (Manu iii 12.)

[illegible] (Manu viii 204)

[illegible]

[illegible] (Manu, ix 87).

[illegible] polygamy [illegible] India that [illegible] number of his wives [illegible] consent [illegible] Mayne on *Hindu Law and Usage* [illegible] Madras [illegible]

Child marriage is [illegible] by Manu as is evident from the following text :—

> A man aged thirty years should marry a maiden [illegible] who pleases him, or a man of twenty-four a girl *eight years of age*. If the performance of his duties [illegible] (Manu ix 94)

The abuses of child marriage [illegible] Hindu [illegible] well known to need emphasis here. Let us [illegible] greater education the evil [illegible] will [illegible] appear.

As regards [illegible] there appear to be some doubt as to whether Hindu Law [illegible] Manu [illegible] what [illegible] Manu [illegible] Manu says:

> "[illegible] *has died*", (Manu, v. 157)
>
> [illegible] Manu [illegible]
>
> [illegible] Manu [illegible]

[illegible] bridegroom —

> [illegible] rule.) (Manu, ix. 69)

[illegible] among the [illegible] permitted [illegible]

[illegible]

Encyclopædia, vol. ix. p. 793).

[illegible]

a *feme-sole* for many purposes:—

> [illegible] *the wife* ", (Manu, ix. 45).

[illegible]

pp. 85–86).

p. 98).

op. cit., p. 100).

[illegible] remarriage [illegible] does not [illegible] remarriage [illegible] right to succeed [illegible] her son by her first husband [illegible] Mulla, [illegible] p. 34).

[illegible] *Hindu Women's Rights* [illegible] *Principles of Hindu Law*. It is provided by Section [illegible] of the *Hindu Widows Remarriage Act* [illegible] that the [illegible] widow remarriage [illegible] the [illegible] Act applies to the property [illegible] Guardian [illegible] children [illegible] spoken of as [illegible] children [illegible] *So* [illegible] *that* [illegible] *the* [illegible] *to be* [illegible] *in the* [illegible] the Allahabad High Court in *Khushi* [illegible] *Ram* (1887) 9 All. [illegible] [illegible] which [illegible] to the [illegible] children [illegible] was [illegible] case. [illegible] was [illegible] in [illegible] *Prasad Sahu* [illegible] *Dhabi* (1911) [illegible] Cal. p. [illegible] when [illegible] the time of the [illegible] [illegible] and then Lordships came to the conclusion that the mother was [illegible] to guardianship [illegible] *the mother* but for [illegible] that the Court could appoint even a *stranger* as guardian and there being a good reason why the strange mother should be made guardian, their Lordships upheld the [illegible] in her favour (*Hindu Law* [illegible] *Mayne* [illegible] p. [illegible]).

Under the *Mitakshara* law, the daughters do not take as joint tenants with benefits of survivorship but they take as tenants-in-common. In the Bombay Presidency the daughter does not take a limited estate in her father's property, but takes the property absolutely. On her death, her share passes to her own heirs as her *stridhan*. (Mulla, *op. cit.*, p. 88).

This rule with some modifications is followed by the *Mayukha* and *Dayabhaga* schools of Hindu Law. (Mulla, *op. cit.* pp. [illegible] and 100).

But it must be noted that *daughters* [illegible] *hard with*

as the authors are dead. This [illegible] main schools of law. Speaking [illegible] the inheritance goes first to the [illegible] to daughters who are married and [illegible] to daughters who are married and [illegible] the second class can inherit [illegible] class is an exception and [illegible] interest whole [illegible] is no existence. Mulla, [illegible]

"Divorce is not known to the [illegible] Hindu Law. The reason is that a marriage from the Hindu [illegible] an indissoluble tie between [illegible] Neither party, therefore, to a marriage can [illegible] divorce [illegible] of caste does not operate [illegible] the adultery of either party [illegible] even the fact that the wife has deserted her husband and [illegible]" (Mulla *op. cit.*, p. 427).

In this respect as we shall see later, the attitude of Hindu Law resembles very much the attitude of the Roman Catholic Church, both regarding marriage as a sacrament, and holding the union of male and female to be indissoluble.

Obviously as we have seen, the status of women is very inferior under Hindu Law. The contrast is more [illegible] when we compare her status to the status enjoyed by the Buddhist women although curiously enough, their status under both the systems of law is supposed to be based entirely upon the same laws of Manu. Why such a strong contrast should exist it is not possible to [illegible] that it does exist is clear, it is suggested from the above comparative study

CHAPTER VI

WOMEN UNDER JUDAISM

According to Westermarck [illegible] the Hebrew [illegible] women [illegible] [illegible]

Of the woman [illegible] [illegible] and the [illegible] law [illegible] [illegible] (Westermarck *op. cit.*, p. 662).

[illegible] women [illegible] a very inferior status in Hebrew society [illegible] early [illegible] period of the Old Testament, [illegible] [illegible] historian. For instance [illegible], speaking of the supposed [illegible] of the character of women by [illegible], attributes it to the influence of Judaism. He says:

[illegible] women may [illegible] the influence of [illegible] which it is probable that most [illegible] evidence [illegible] of the common [illegible] [illegible] The custom of purchase [illegible] of the bride was admitted. Polygamy was [illegible] practised by the wealthy [illegible] a woman was regarded as the origin of [illegible]. A period of purification was appointed after the birth of every child, but by a very significant provision it was twice as long in the case of a *female* as of a male child (Lev. xii. 2, 3, 4 and 5). 'Ah! bedness of men' a Jewish writer emphatically declared, 'is better than the goodness of women.' The type of female excellence exhibited in the early period of Jewish history is on a general of a low order, and certainly far inferior

to those of Roman history or Greek poetry, and the warmest eulogy of a woman in the Old Testament is probably that which was bestowed upon her who, with in instances of the most aggravated treachery, had murdered the deputy to whom she had taken a fig and another kind of [illegible] (Howard, *op. cit.*, p. [illegible]).

By the Jewish law, as by Hindu law, at the time of the present era, husband was [illegible] of more (Deut. xxv. 1-4). At most, [illegible] only a few [illegible] of the woman's later right [illegible] by the Talmud [illegible] separation. [illegible] for the [illegible] of the school of Hillel [illegible] maintained, the husband could not [illegible] the act by simply handing her a "get" or bill of divorce. By the written law, only in two cases for grave misconduct was she deprived of this power. [illegible] in practice there were several ameliorating conditions which tended to put a check upon arbitrary action. [illegible] a private transaction, certain formalities [illegible] observed, in connection with the "get" [illegible] of publicity, and in case [illegible] dower, representing the amount [illegible] price of the bride, [illegible] from the husband's property. (Howard, *op. cit.*, pp. 12–14).

Polygamy among the Jews continued up to the [illegible] century. An express prohibition of polygamy was not promulgated until the convening of the Rabbinical synod at Worms under the celebrated Rabbi Gershom in [illegible] the beginning of the eleventh century. Though the prohibition was originally made for the Jews living in Germany and North France, it was successively accepted by all European countries. Nevertheless the Jewish Marriage Code retained many provisions which originated at a time when polygamy was still legally in existence". (Mielziner, *The Jewish Law of Marriage and Divorce*, p. 30)

[illegible]

[illegible]

[illegible]

[illegible] ", (xviii. 8)

[illegible]

(xviii. 9).

[illegible] Wives [illegible] said to David, [illegible] the twain ", (xviii. 21).

[illegible]

CHAPTER VII

WOMEN UNDER CHRISTIANITY

[illegible]

feriority of woman to man.

[illegible]

(a) And I will put [illegible] woman and between thy seed and her seed; it shall bruise thy head, and thou shalt bruise his heel. (Gen. iii. 15).

(b) Unto the woman He said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee.

(c) "And unto Adam He said, Because thou hast hearkened unto the voice of thy wife, and hast eaten of the tree, of which I command thee, saying, Thou shalt not eat of it, cursed is the ground for thy sake; in sorrow shalt thou eat of it all the days of thy life." (Gen. iii. 17).

Again, while discussing the relative importance of the sexes the Bible says:—

(a) "For the man is not of the woman, but the woman of the man", (1 Cor. xi. 8).

(b) "Neither was the man created for the woman, but the woman for the man" (1 Cor. xi. 9).

(c) "For this cause *ought the woman to have power on her head*, because of the angels" (1 Cor. xi. 10).

In the First Epistle of Paul the Apostle to Timothy we again find the following.—

(a) "I will therefore that men pray everywhere, lifting up holy hands, without wrath and doubting". (1 Tim. ii. 8).

(b) "In like manner also that women adorn themselves in modest apparel, with *shamefacedness and sobriety*, not with braided hair or gold or pearls, or costly array", (1 Tim. ii. 9).

(c) "Let the women learn in silence with all subjection", (1 Tim. ii. 11).

(d) "But I suffer not a woman to teach nor to usurp authority over the man, but to be in silence", (1 Tim. ii. 12).

(e) "For Adam was first formed, and then Eve", (1 Tim. ii. 13).

(f) "*And Adam was not deceived but the woman being deceived was in the transgression*" (1 Tim. ii. 14).

Thus Paul the premier Saint of Christendom, allots to woman a status inferior to that of man. Woman is here made the scapegoat for her as well as Adam's sin. But for Eve Adam would not have been banished from the Garden of Eden, nor would there have been any necessity for the expiation

of the original sin by the subsequent crucifixion of Jesus Christ, the son of God!" Poor woman! What a world of difference there is in this story and the story as given in the Qur'an. In the latter, as we shall see very soon, the fall of man was due, not solely to the weakness of Eve, but to the weakness of *both* Adam and Eve. Both were transgressors and both suffered.

Westermarck, commenting on this story, says:—

"Tertullian maintains that a woman should go about in humble garb mourning and repentant in order to expiate that which she derives from Eve, the ignominy of the first sin and the odium attaching to her as the cause of human perdition. 'Do you know that you are each an Eve? The sentence of God on this sex of yours lives in this age: the guilt must of necessity live too. You are the Devil's gateway, you are the unseaters of that forbidden tree; you are the first deserter of the divine law; you are she who persuaded him whom the Devil was not valiant enough to attack; you destroyed so easily God's image, Man. On account of your desert—that is, death—even the son of God had to die!'" (Westermarck *op. cit.*, pp. 662–3).

This is strong language indeed, but that woman was unfairly denounced and horribly persecuted during the early days of Christianity is amply clear. For instance, Lecky says:—

"The combined influence of the Jewish writings, and of that ascetic feeling which treated woman as the chief source of temptation to man, was shown in those fierce invectives against this sex which form so conspicuous and so grotesque a portion of the writings of the Fathers and which contrasts so curiously with the adulation bestowed upon particular members of the sex. Woman was represented as the door of hell, as the mother of all human ills. She should be ashamed at the very thought that she is a woman. She should live in con-

tinual penance on account of the curse she has brought upon the world. She should be ashamed of her dress, for it is the memorial of her fall. She should be especially ashamed of her beauty, for it is the most potent instrument of the demon. Physical beauty was indeed perpetually the theme of ecclesiastical denunciations, though one singular exception seems to have been made. For it has been observed that in the Middle Ages the personal beauty of the bishops was continually noticed upon their tombs. Women were forbidden by a Provincial Council (a Council of Auxerre, A.D. 578) in the sixth century, on account of their impurity, to receive the Eucharist into their naked hands. Their essentially subordinate position was continuously maintained", (Lecky *op. cit.* pp. 357-8).

At the council of Macon, towards the end of the sixth century, a bishop vehemently denied that woman even belonged to the human species. (Westermarck *op. cit.* p. 463).

Poor woman. Had Jesus Christ lived to hear these ignoble sentiments, he would have been horrified and shocked. The life of Christ abundantly proves that he had all the manly qualities of modesty and chivalry which have been the birthright of all the Prophets. I consider him to be of the same type and class as the Prophet Muhammad. The religion which claims to-day to be "Christianity" is certainly not the religion taught by the Nazarene. Jesus had the profoundest respect and love for his mother, the Virgin Mary. Naturally he respected all women, which can best be illustrated by the protection which he gave to the woman taken in sin who was being persecuted by the Jews. (Matt. viii. 1-5). Christ, a model man, never degraded woman. To say that he did is a blasphemy and a lie. But there is certainly a great deal of truth in the statement that his disciples and those that came after him claiming to be savants and saints of the Church *did* degrade woman, and denied to her her rightful place in the social scheme. Throughout the ages, until very

recent times, the Church has adopted as its ideal [illegible] the ideal of pure woman. Her emancipation and [illegible] has been secured [illegible] reformers were able to change the Bible [illegible] inferiority of woman to man. How far Muhammad was in advance of these reformers will be [illegible] status of woman in Islam.

CHAPTER VIII

WOMEN UNDER CHRISTIANITY: THEIR LEGAL STATUS

[illegible] position of woman under [illegible] capacity to hold [illegible] Canon Law was followed [illegible] that of the husband and [illegible] in the eye of the law.

[illegible] observe —

[illegible] *married women* was for [illegible] Roman but if Canon [illegible] so widely from the [illegible] of their [illegible] which [illegible] Christian institutions [illegible] to restore [illegible] personal liberty conferred on them by the [illegible] *perpetuity disturbance of married* [illegible] on basis from their personal [illegible] of their [illegible] to keep [illegible] expressions of the Canon [illegible] There are many vestiges [illegible] ecclesiastical principles, [illegible] Canon Law [illegible] prevailed [illegible] the systems [illegible] women are [illegible] the Canon Law exclusively or

those which, from the lateness of their contact with European civilisation, have never had their archaisms weeded out. The Danish and Swedish laws, harsh for many centuries to all females, are still much less favourable to wives than the generality of Continental [illegible] Code Napoléon. And yet more stringent in the proprietary incapacities it imposes is the English Common Law, which borrows far the greatest number of its fundamental principles from the jurisprudence of the Canonists. Indeed, the part of the Common Law which prescribes the legal situation of married women may serve to give an Englishman clear notions of the great institution which has been the principal subject of this chapter. I do not know how the operation and nature of the ancient *Patria Potestas* can be brought so vividly before the mind as by reflecting on the prerogatives attached to the husband by the pure English Common Law, and by recalling the rigorous consistency with which the view of a *complete legal subjection on the part of the wife* is carried by it, where it is untouched by equity or statutes, through every department of rights, duties, and remedies.' Maine, *Ancient Law*, 10th ed., pp. 162-164.

Lecky, in another [illegible] passage, says:—

'In addition to the personal restrictions which grew necessarily out of the Catholic doctrines concerning divorce, and the subordination of the weaker sex, we find numerous and stringent enactments, which rendered it impossible for women to succeed to any considerable amount of property, and which almost reduced them to the alternative of marriage or a nunnery. *The complete inferiority of the sex was continually maintained by the law*, and that generous public opinion which in Rome had frequently revolted against the injustice done to girls, in depriving them of the greater part of the inheritance of their fathers, totally disappeared. Wherever the Canon Law was the basis of legislation we find laws of succession sacrificing the interests of daughters and wives, [illegible] Pagan [illegible] had been

formed and regulated by the law [illegible] we [illegible] tempt made to [illegible] them all [illegible] ", (Lecky *History of European Morals* [illegible]).

In England, up till the [illegible] of January, 188[illegible] it was [illegible] stood that, as a *general rule* the contract of a married woman was *void*. Yet there were exceptions [illegible] as a married woman could make a valid contract but could not sue or be sued upon it apart from her husband, [illegible] she could sue but could not be sued alone, [illegible] she could both sue and be sued alone. *The Married Women's Property Acts of 1870 and 1874* specified various forms of property as the separate estate of the married woman and enabled them to sue for such property and gave them also remedies civil and criminal for its protection that an unmarried woman would have had under the circumstances. Under these Acts "a married woman might make a contract for the exercise of her personal skill or labour and maintain an action upon it", (Anson *Law of Contract*, pp. 153, 155).

The Married Women's Property Act 1882 repealed the Acts of 1870 and 1874 and by Subsection 1 of Section 1 it enacted that —

"All property real and personal, in possession, reversion or remainder, vested or contingent, held by a woman before, or acquired after marriage is now her separate property. She can acquire, hold and dispose of it by will or otherwise as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee" (Anson, *p. cit.*, p. 156).

By Subsection 2 of Section 1 of the Act it was laid down that:—

"A married woman shall be capable of suing and being sued either in contract or in tort, or otherwise in all respects as if she were a *feme sole* and *her husband need not be joined* with her as plaintiff or defendant, or be made a party to any action or legal proceeding brought by or taken against her [illegible] and [illegible] damages

[illegible] against her in any [illegible] proceeding shall be payable out of her separate property and not otherwise."

But it has been held, that the above enactments do not affect the Common Law liability of a husband for his wife's *torts* during the subsistence of the marriage. "It appears to give the power of suing the wife alone [illegible] her separate property and [illegible] charge of the [illegible] to enforce judgment against [illegible] there would be no chance of obtaining judgment against the wife, the husband is still subject to his old Common Law liability. The words of [illegible], *need not be joined*, [illegible] *do not discharge the husband from his old liability*; they are intended [illegible] the power of suing husband and wife [illegible] judgment may be [illegible] against the wife [illegible] against her separate property [illegible] the plaintiff [illegible] the husband [illegible]."
(*Seroka* v. *Kattenburg*, 18[illegible], 17 Q.B.D., p. 177.)

The Court of Appeal followed and approved of this decision in the recent cases of *Earle* v. *Kingscote* (1900, 2 Ch. p. 585) and *Beaumont* v. *Kaye* (1904, 1 K.B. p. 292).

Thus it is seen that even to this day the identity of the wife is, to a certain extent, still merged in that of her husband in England. But the Indian conception treating the wife as a *feme sole* in all respects was far in advance of any Western jurisprudence, as will be clear from the following chapters.

CHAPTER IX

DOES CHRISTIANITY FORBID POLYGAMY?

It [illegible] Christianity interdicts polygamy and makes monogamy obligatory on all. Nothing can be farther from the truth.

Amongst the systems of the general prevalence of polygamy amongst [illegible] remarks:—

"And [illegible] was understood by the leaders of Christendom [illegible] there is no intrinsic immorality or sin [illegible] Of the greatest Fathers of [illegible] St. Augustine has declared that polygamy [illegible] where it is a legal institution of a country and [illegible] former, even as late as the seventeenth [illegible] declared valid the taking of a second [illegible] of a contemporaneously with the first in [illegible] (Ameer Ali *Life and Teachings of Mahomet*, p. [illegible] and also Ameer Ali *Mahomedan Law*, vol. ii. p. 23).

When Christianity made its appearance in Rome, History shows that polygamy was recognized and the early Christian Emperors [illegible] have admitted its validity. Says Ameer Ali:—

"The Emperor Valentinian II, by an Edict allowed all the subjects of the Empire if they pleased to marry several wives. Nor does it appear from the ecclesiastical history of those times that the Bishops and the heads of the Christian

[illegible] made any [illegible] to this law. For from [illegible], all [illegible] and the people [illegible] Even [illegible] of [illegible] rated [illegible] great [illegible] in [illegible] *But* [illegible] The great [illegible] pagan [illegible] the [illegible] advancement of [illegible] but [illegible] was practiced [illegible] Amer. *An Life and Teachings of* [illegible]

John Milton [illegible] and [illegible] of polygamy, [illegible]

In [illegible] I [illegible] in comparison [illegible] *open* [illegible] and public [illegible] others [illegible] spring [illegible] sprang from [illegible] of Israel for whom [illegible] said Deut. [illegible] congregation of [illegible] Lord [illegible] in that state [illegible] of Jacob [illegible] But [illegible] assertion [illegible] extreme [illegible]

[illegible] by the light of injustice as well as an [illegible] of [illegible] and cruelty in relation to a woman as [illegible] that so far [illegible] the lawfulness of polygamy [illegible] of the [illegible] that it should be [illegible] (Milton, *De [illegible] Doctrine* [pp 231-2])

[illegible] the Bible clearly admits the [illegible]

(c) "If [illegible] take to [illegible] her food, her raiment, and her duty of marriage, shall he not diminish", (Exod. xxi. 10).

(e) "And I gave thee David thy master's house and thy master's wives into thy bosom, and gave thee the house of Israel and of Judah, and if that had been too little I would moreover have given unto thee such and such things" (2 Sam. xii. 8)

Milton argues that the wives of Saul, given to David by the above text were the *concubines* in the house of Saul, and therefore David had not committed incest, since Saul was his father-in-law (Milton *op. cit.* pp. 2,8-9)

(b) "Kings's daughters were among thy honourable women: upon thy right hand did stand the queen in gold of Ophir", (Psa. xlv. 9).

(d) "And Jehoiada the priest *chose two wives* in the sight of the Lord all the days of Jehoiada the priest", (2 Chron. xxiv. 2).

(c) "And Jehoiada *took for him two wives*, and he begat sons and daughters", (2 Chron. xxiv. 3)

From a consideration of the above texts and others from the Bible Milton argues:-

"On what grounds, however, can a practice be considered dishonourable or shameful which is prohibited to no one even under the Gospel, for that dispensation annuls none of the

merely civil regulations which existed previous to its introduction. It is only enjoined that elders and deacons should be chosen from such as were husbands of one wife. (1 Tim. iii. 2, and Titus i. 6). This implies, not that to be the husband of more than one wife would be a sin, for in that case the restriction would have been equally imposed on all, but that in proportion as they were less entangled in domestic affairs they would be more at leisure for the business of the Church. Since, therefore, polygamy is interdicted in this passage to ministers of the Church alone, and that not on account of any sinfulness in the practice, and since none of the other members are precluded from it either here or elsewhere, it *follows that it was permitted*, as above said, to all the remaining members of the Church, and that it was adopted by many without offence". (Milton, *op. cit.*, pp. 240-41).

CHAPTER X

DIVORCE IN CHRISTIANITY

Did Christ allow the right of divorce? The Protestants say "Yes," but the Roman Catholics emphatically assert "No."

"According to the fundamental teaching of Jesus, as reported by Matthew (xix. 9) the husband is forbidden to put away the wife, *except for unfaithfulness* (Matt. xix. 3-12). Divinely created as male and female, 'they twain shall be one flesh,' and 'what therefore God hath joined together, let no man put asunder,' (Matt. xix. 6). Whether for the same reason the woman may put away the man, or whether either the innocent or guilty party may contract a second marriage, we are here not expressly informed. Inferences may, of course, be drawn by assuming that Jesus had the principles of the Jewish law in mind, but this mode of procedure is scarcely satisfying. Nor do the other sacred writers throw any clear light on these important questions. Rather do they deepen the obscurity, for both Mark (x. 2-12) and Luke (xvi. 18) appear absolutely to prohibit divorce, not expressly admitting even the one ground of separation granted on the authority of Matthew. The utterances of Paul on this subject (1 Cor. vii. 8-10), as on all questions connected with marriage and the family, are of the highest importance in view of their historical consequences. Referring directly to the teaching of Jesus, he first unmeaningly denies the right of divorce to either party. With Mark and Luke he omits the exception mentioned by Matthew, and with Mark he expressly

forbids the wife to depart from her husband and adding [illegible] the inconsequent and bewildering command "if she depart let her remain unmarried or be reconciled to her husband" (Howard, *History of Matrimonial Institutions*, [illegible] 21).

Thus we see that among Christ's own [illegible] no unanimity as to whether the Master sanctioned [illegible] and remarriage or not. The confusion which [illegible] passages gave rise to was settled only after many centuries of struggle which divided the world of Christendom into two camps, one for divorce and the other against it [illegible].

Milton called divorce "A law of moral equity, a plain moral common law so clear as nature and reason [illegible] it was left to a man's own arbitrament to be determined with God and his own conscience and the reverend elders who is not too thick-headed may see how unnatural and destructive it is to the house, the Church and the Commonwealth" (Milton, *Doctrine and Discipline of Divorce*, Prose Works, III, pp. 241–2).

We are entirely in agreement with Milton's views. [illegible] anyone deny that a refusal to grant divorce [illegible] inflict great hardship on both husband and wife. It is productive of much social harm as it [illegible] the Protestant Church has allowed the right of divorce but here again we find that the reforms were [illegible], not of the Church, but of the State—of a few [illegible] the Roman Catholic Church on the other hand absolutely forbids divorce, asserting that it is against the [illegible] of Christ. All that it allows, in cases of adultery [illegible] husband and wife, is *judicial separation* and not [illegible] judicial separation, naturally [illegible] remarry and so [illegible] a life of perpetual misery, and it wrongly [illegible] immorality which, as Milton observes, is [illegible] the Church and the State. We are, therefore, thankful [illegible]

Arabian Prophet that he enables us to have recourse to divorce when the husband and wife cannot live peacefully together. There is no controversy in Islam as to the lawfulness or otherwise of divorce. In a few short verses the Qur-an lays down the law and admittedly, as we shall see, they are fair and just.

CHAPTER XI

WOMEN IN PRE-ISLAMIC ARABIA

"AMONG Mohammed's own people, the Arabs, unlimited polygamy prevailed prior to the promulgation of Islam. A man might marry as many wives as he could maintain, and repudiate them at will. A widow was considered as a sort of integral part of the heritage of her husband. Hence the frequent unions between stepsons and mothers-in-law, which when subsequently forbidden by Islam were branded by the name of *Nikha-ul-Makht* (shameful or odious marriages). Even polyandry was practised by the half-Jewish, half-Sabean tribes of Yemen", (Ameer Ali, *Life and Teachings of Mohammed*, p. 225, and also Ameer Ali, *Mahomedan Law*, vol. ii, p. 20).

"Before Islam, a woman was not a free agent in contracting marriage. It was the right of the father, brother, cousin, or any other male guardian, to give her in marriage, whether she was old or young, widow or virgin, to whomsoever he chose. Her consent was of no moment. There was even a practice prevalent of marrying women by force. This often happened on the death of a man leaving widows. His son or other heir would immediately cast a sheet of cloth on each of the widows (excepting his natural mother), and thus was a symbol that he had annexed them to himself. If a widow escaped to her relations before the sheet was thrown over her, the heirs of the deceased would refuse to pay the dower. This custom is described as the inheriting of a deceased man's widows by his heirs, who in such cases would divide them among themselves

like goods. There was no restriction as to the number of wives an Arab could take. The only limit was that imposed by his means, opportunity and inclinations. Unrestricted polygamy, which was sanctioned by custom, was universally prevalent. This was exclusive of the number of slave-girls which a man might possess. The laws of relationship within which marriage was prohibited were followed and [illegible] by [illegible] generally. There can be no doubt that an Arab could not marry his mother, grandmother, sister, [illegible] daughter and perhaps his [illegible] was [illegible] that [illegible]. But *there are very [illegible] men who would marry their own daughters and sisters.* An Arab was permitted to take as his wife his step-mother, [illegible] wife's sisters, and could combine in marriage [illegible] of a woman and her niece. It is [illegible] that he could marry his mother-in-law or step-daughter. Unlimited as an Arab was in the number of his wives, he was nevertheless absolutely free to release himself from the marital tie. His power in this connection was absolute and he was not required or expected to assign any reason for his action, nor was he under the necessity of observing any particular procedure. The word commonly used for this purpose was *talaq*. It depended upon his discretion whether he would dissolve the marriage absolutely and thus set the woman free to marry again or not. He might also choose revoke the divorce and resume marital connection. Sometimes an Arab would pronounce *talaq* ten times and take his wife back, and again divorce her and then take her back, and so on. The wife in such a predicament was entirely at the mercy of the husband and would not know when she was free. Sometimes the husband would renounce his wife by means of what was called a suspensory divorce. This procedure did not dissolve the marriage, but it only enabled the husband to [illegible] his wife, while the latter was

[illegible] Islam [illegible] Arabs [illegible] right to release herself from the marriage bond. But her parents by a friendly arrangement with the [illegible] by returning the dower of [illegible] party. Such an arrangement was called *Khula* and by it the marriage tie would be absolutely dissolved.", Abdur Rahim, *Muhammadan Jurisprudence*, pp. 9–11)

Some of the marriages [illegible] the Arabs before Islam. [illegible] they even practised *female infanticide* as is clear from the following:—

"In proportion to his [illegible] an Arab father regarded the birth of a daughter as a calamity partly because of the degraded status of women. During the time of the Prophet female infanticide was prevalent and many fathers used *to bury their daughters* [illegible]", (Abdur Rahim, *op. cit.*, p. 12, and Amir Ali, *Muhammadan Law*, vol. ii. pp. 19–21).

As regards the rights of the Arab women [illegible], we find that though a woman was [illegible], she was not [illegible] in the matter of [illegible]. And [illegible] that she might receive from [illegible] or a gift from her husband or her parents and [illegible] they [illegible]. Sometimes women frequently [illegible] and some of them were owners of [illegible] *neither the person nor possessions of a woman* [illegible] *she is under the protection of her parents or* [illegible] *or her husband*. If her protector proved incapable or [illegible] she was [illegible] any remedy", Abdur Rahim, [illegible] p. 12.

Regarding Succession and Inheritance [illegible] of the heathen Arabs were as follows:—

"On the death of an Arab his possessions such as had not been disposed of during his lifetime were capable of being [illegible] arms and females and minors being excluded. This rule was

[illegible] The [illegible] of the [illegible] in the [illegible] were not [illegible] *[illegible] probably excluded* [illegible] *at all* but the [illegible] of the widows [illegible] maintenance [illegible]

[illegible] bears a strong [illegible] laws. Woman was not [illegible] member of society, but [illegible] This was so in all primitive [illegible]

CHAPTER XII

FALL OF ADAM IN THE QUR-AN

So [illegible]

N[illegible]

given in the Qur-án.

We shall begin with the Qur-án [illegible]

man":—

(a) "And We said O Adam [illegible]

the garden, and eat from [illegible]

you wish and do not [illegible]

will be of the unjust", (ii 35)

(b) "But the [illegible] made them [illegible]

them to depart from [illegible]

and We said [illegible]

of others, and [illegible]

and a provision [illegible]

And again:—

(c) "But the devil made them [illegible]

[illegible] from them [illegible] said

Your Lord has [illegible] that you may

not be [illegible] immortals", vii 20

(d) "[illegible] had [illegible]

> tasted of the tree, their evil inclinations became manifest to them, and they both began to cover themselves with the leaves of the garden, and their Lord called out to them: Did I not forbid you *both* that tree and say to you that the devil is your open enemy!", (vii. 22).

He also [illegible] that it was Eve and not Adam who was responsible for the banishment of Adam and Eve from the Garden of Eden. In this allegorical picture both man and woman are *equally* culpable. Both had committed sin. Both crave the forgiveness of the Almighty as is shown from the following verse:

> "*They said*: Our Lord! We have been unjust to *our selves*, and if Thou forgive us not and have not mercy on us, we shall certainly be of the losers", (vii. 23).

In one sense Islam has banished the stigma from woman that she is man's eternal seducer and tempter and that but for her man would be pure and sinless. In this respect alone I submit Islam stands far and above the conception of woman according to Paganism, Hinduism, Buddhism, Judaism and Christianity. Woman is not solely responsible for the sins of mankind as we have seen above, but that both man and woman are liable to err and make mistakes.

CHAPTER XIII

DUTIES OF GUARDIANS

The duties of guardians towards orphans are made clear from the following verses:—

(a) And give the orphans their property, and do not substitute worthless (things for their good ones), and do not devour their property (as an addition to) your own property. This is truly a great crime" (iv. 2).

(b) And do not give away your property which Allah has made for you (a means of support) to the weak of understanding, and maintain them out of the profits of it, and clothe them and speak to them words of honest advice", (iv. 5).

By "your property" in the above verse is meant the property of the orphans which is under the guardian's control. The above verse lays down the principle of the Court of Wards. It requires guardianship in the case of persons who are of weak understanding, whether minors or adults.

(c) "And test the orphans until they attain puberty, then if you find in them maturity of intellect, make over to them their property, and do not consume it hastily and extravagantly, lest they attain to full age; and whoever is rich, let him abstain altogether, and whoever is poor, let him eat reasonably; then when you

make over to them their property [illegible] with [illegible] in their presence and Allah [illegible] Reckoner (iv. 6)

The above verse [illegible] the guardians the duty of protecting the property [illegible] and not to waste it so that when the orphans [illegible] the property may be given over to them. [illegible] This verse is in keeping with the property. On the other hand when [illegible] the [illegible] in respect of wealth which must be commensurate with the value of property and dealing with the [illegible] management. The duty of witnesses when the guardian hands over the property to the ward is necessary to avoid disputes [illegible] But if the trustee has been [illegible] breaches of trust then [illegible] warned that Allah [illegible] as a keeper' that is [illegible] He knows [illegible] be pleased

- And [illegible] the orphans and the [illegible] and [illegible] and speak to them kind words (iv. [illegible])
- As for those who swallow the property of the orphans unjustly, surely they swallow fire into their bellies and they shall enter burning fire (iv. 10).

The above [illegible] the enormity of the crime of breaches of trust on the part of guardians. The Qur'ān enjoins scrupulous honesty on all trustees or guardians. These and similar verses were necessary to protect the poor orphans who were mostly women, from the tyranny of brutal and selfish relatives and guardians in the days of ignorance.

CHAPTER XIV

TREATMENT OF WOMEN

[illegible] the Qur-an says —

[illegible]

Maulvi Muhammad Ali [illegible] says —

[illegible]

their ways a way is opened for them by Allah and they regain their liberty. [illegible] till [illegible] Pagan [illegible] women at the [illegible] among of Islam [illegible]" (Muhammad Ali, *Holy Quran*, p. 204).

(b) "And as for the two who are guilty of *indecency* from among you, give them both a *slight punishment*; then if they repent and amend, turn aside from them. Surely Allah is Oft-returning (to mercy), the Merciful". (iv. 16)

Here "the two" clearly means both the man and the woman, and the [illegible] of the punishment is left indefinite [illegible] nature of the offence committed.

(c) "O you who believe! it is not lawful for you that you should *take women as heritage* against their will, and do not straiten them in order that you may take part of what you have given them, unless they are guilty of manifest indecency, *and treat them kindly*; and if you hate them, it may be that you dislike a thing while Allah has placed abundant good in it". (iv. 19)

(d) "And marry not women whom your fathers married, except what has already passed; this surely is indecent and hateful, and it is an evil way". (iv. 22)

If we analyse the above two verses, we get the following rules:—

(1) They deny the right of the heir to inherit the deceased man's widows, which, as we have noticed, existed among the pre-Islamic Arabs.

(2) They deny the right of the heir to deprive the widows of their dowry unless they were guilty of hatred and

desertion of the husband [illegible] doing harm to the husband and his family [illegible] In such cases the fault lies on the part of the wife. She may be required to return to her duty sharply, or in part (Muhammad Ali, *op. cit.*, pp. 205–6).

(3) The Jews of the [illegible] are commanded to treat the widows well [illegible] to despise them.

(e) "And if you wish to have [illegible] wife in the place of another and you have given [illegible] them a heap of gold, then take not from it anything. Would you take it by slandering (her) and doing (her) manifest wrong?", (iv. 20)

(f) "And how can you take it when one of you has already gone in to the other and they have made with you a firm covenant?", (iv. 21).

Both the above verses remedy another evil which was common in the days of ignorance. It was notorious that if a married man desired to marry another woman he would accuse his first wife of gross misconduct, thus compelling her to obtain a divorce by paying a large sum of money. This would be a violation of the marriage covenant, and the Qur'an rightly forbade it.

It is also noteworthy that the Qur'an lays great stress on the fair name and reputation of women. For instance, it says:—

(g) "And *those who accuse free women* then do not bring four witnesses, flog them, give eighty stripes, and do not admit any evidence from them ever, and these it is that are the transgressors." (xxiv. 4).

Here the accusation is against *unmarried* women, and the punishment for it is prescribed which is severe. The following

two verses deal with the case of a cessation of the wife by the husband and *vice versa* —

> And those who [illegible] their wives and have no witnesses except themselves, then evidence of one of these [illegible] bearing Allah to witness that he is surely of the truthful ones", (xxiv. 6).
>
> 1 "And the fifth time that the curse of Allah be on him if he is one of the liars", (xxiv. 7)
>
> And it shall avert the chastisement from her if she testify four times bearing Allah to witness that he is surely one of the liars", (xxiv. 8)
>
> 2 And the fifth time that the wrath of Allah be on her if he is one of the truthful" (xxiv. 9)

Verses [illegible] to [illegible] relate to cases when either the husband or the wife accuses the other of infidelity but cannot produce witnesses in proof of his or her allegation. In such cases a divorce is effected, as neither party is punishable for the accusation, which is based simply on oath against oath. In this connection it must be noted that if the husband accuses his wife of infidelity the wife may claim divorce *by a suit*, but *laan*, or the mere imprecation or accusation does not *ipso facto* operate as a divorce. Mulla, *Mahomedan Law* (8th ed., p. 194).

> (*f*) "Men are the *maintainers* (*Qawwamun*) of women, because Allah has made some of them to excel others and because they spend out of their property, the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping places and beat them, then if they obey you, do not seek a way against them, surely Allah is High, Great", (iv. 34).

[illegible] Prophet treated [illegible] Let us [illegible] Muhammad Ali —

"[illegible] and [illegible] her and [illegible] to be her [illegible] *qawwamun* is only meant [illegible] of women and the [illegible] to excel these [illegible] and [illegible] to Allah. [illegible] carried of her duty to Allah and to her [illegible] The remedy point d out when [illegible] is threatened. At first she is only [illegible] If she desists, the evil is mended, but if she persists [illegible] course her bed is to be separated [illegible] chastisement is permitted *a* [illegible] last [illegible] two things must be observed [illegible] First, it is a mere permission and [illegible] Prophet made it clear that, though [illegible] This is the Prophet's reply [illegible] have said, on the complaint [illegible] ment by their husbands [illegible] *best among you* [illegible] resort to the [illegible] The Holy Prophet [illegible] treatment toward women [illegible] good treat-

ment [illegible] his wife [illegible] of his goodness in general—*'the best of you is he who is best to his wife'* show clearly that this permission is meant only for the type of men and women who belong to a low grade of society. Secondly, even this permission cannot be adopted in the immediately following sayings of the Holy Prophet make it quite evident that chastisement, when resorted to in extreme cases, must be very slight. 'Ali says that it may be with a tooth brush called *Miswak* or something like it. (Muhammad Ali, *op. cit.*, pp. 211-12)

In this connection I may point out the view of English Common Law on the right of the husband to chastise his wife. Blackstone, writing in the eighteenth century, says:

"The husband also by the old law might give his wife moderate correction. For as he is to answer for her behaviour the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a master is allowed to correct his apprentices or children; for husband and wife are jointly liable in some cases to answer. But this power of correction was confined within reasonable bounds, and the husband was prohibited from using any violence to his wife. The *Civil Law* gave the husband a much more authority over his wife, allowing him even to inflict *castigationes quas in suos liberos, uxores, servos, exercere licet, scilicet, non ad sanguinem, non ad membrorum mutilationem, non ad periculum vitae, nisi id ex pristina et recepta consuetudine, quod in Scaevolae responsis legimus*. But we find in the polished reign of Charles the second this power of correction begin to be doubted, and a wife may now have security of the peace against her husband, or, in return, a husband against his wife. Yet the lower rank of people, who were always fond of the old Common Law, still claim, and exert, their ancient privilege; *and the courts of law will still permit a husband to restrain a wife of her liberty in cases of any gross misbehaviour*". (Blackstone, *Commentaries on the Laws of England*, vol. 1, p. 444).

Clearly, then, this permissive use of chastisement in the time of Muhammad among a savage and barbarous people was considered necessary. Today, just as in England the right has become a mere legal maxim, so in almost all Islamic countries the power of chastisement has fallen into decay and never exercised as of right.

CHAPTER XV

MARRIAGE IN ISLAM

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] women [illegible] are already married [illegible] Muslims [illegible] the [illegible] who [illegible] right hand [illegible] captives of war [illegible] which [illegible] even though they may be married [illegible] *provided they become Muslims* [illegible] marriage with an idolatress by [illegible] *And* [illegible] *and idolatresses* [illegible] power [illegible] And whoever among you [illegible] ampleness of means to marry free women [illegible] then you may marry of those whom your hands possess from among your [illegible] maidens [illegible] and Allah knows best your faith [illegible] from the other [illegible] *marry them with the permission* [illegible] of their masters *and give them their dowries*, justly, being chaste, [illegible] receiving *fornicators*, and when they are married [illegible] then if they are guilty of indecency [illegible] half the punishment which is inflicted upon free women. This is for him among you who fears falling into evil and that you abstain is better for you and Allah is forgiving Merciful [illegible] 25)

The above verse may be analysed, and means as follows —

(1) Maiden captives of war may be married if they become Muslims, when the man is poor and cannot afford to marry a free-born woman

[illegible]

of their masters is necessary.

[illegible]

also the giving of dowries.

[illegible]

forbidden by this verse.

[illegible]

(a) "And [illegible] *and those* [illegible] *and female slaves*, [illegible] will [illegible] from [illegible] Amply [illegible] Knowing", (xxiv. 32).

(b) [illegible] *girls to* [illegible] *keep chaste* [illegible] *life* [illegible]

Reverting to chapter [illegible] above, we may note the remaining characteristics —

(5) If such marriages will [illegible] then only half the punishment that is normally inflicted on free women may be inflicted upon them, the reason being that their captivity is enough punishment for them, and the full penalty of the law need not be enforced.

CHAPTER XVI

CONSENT TO MARRIAGE NECESSARY

a) "Under the Muhammadan law [illegible] with out their consent [illegible] they may attend their [illegible] emancipated so far as their [illegible] from the *patria potestas* [illegible] selves in marriage [illegible] same legal [illegible] contract any contract of legal [illegible] sent of their natural guardians [illegible] Poll [illegible] consent of the [illegible] rule however a person who [illegible] considered *without to attain* [illegible] *parts*, possessed of the capacity [illegible] transactions" (Amir Ali, *Muhammadan Law* [illegible] pp. [illegible])

Amir Ali quoting the *Hidaya* says:

(b) "It is not lawful for a guardian to force an adult virgin into marriage. *Neither a father nor the sheikh can* [illegible] *contract a* [illegible] *marriage* [illegible] *is adult and of sound mind*, [illegible] *her permission whether she be a virgin or not*" (Amir Ali *op. cit.*, p. 279)

c) [illegible] the right of *father* [illegible] *the right of marrying minors without their consent*) is theoretically an absolute right [illegible] attached to its exercise [illegible]

[illegible] without any [illegible] on the grounds, [illegible] prohibited from marriage [illegible] to the [illegible] where [illegible] to laxes [illegible] [illegible] In fact [illegible] law is particularly [illegible] to the interest of the child. It takes [illegible] that the right of *Jabr* should never be exercised to the prejudice of the infant. Any act of the father which is likely to impair the interests of the minor is considered void and [illegible] the Prophet Jesus [illegible] orders in order to prevent the completion of such act or if completed, to annul it." (Ameer Ali *op. cit.*, pp. 289-91)

(d) "Even in the case of a marriage contracted by the father or grandfather as guardian in the presumption that it is for the benefit of the minor is not conclusive, and such a marriage is liable to be set aside in certain cases, which it is plainly unlawful and injurious to the minor. The accepted view of the jurists seems to be that if the father was not a man of proper judgment and was of a loose character, and married his minor daughter to a man of financial [illegible] it is liable to be set aside." (Abdul Karim, *op. cit.*, p. 332).

The above right of *Jabr* is vested in the father or grandfather and we have seen how qualified and restricted this right is. But where the minor is given in marriage by any relative *other* than the father or grandfather, the law on the subject is as follows :—

(e) "Where a minor is contracted in marriage by any person other than the father or the grandfather, *such minor on attaining puberty has an absolute right to ratify or rescind the contract*. But the minor has an option even in the case of a marriage contracted by a father or grandfather, if the latter was a prodigal or addicted to evil ways or the marriage was *manifestly* to the minor's disadvantage." (Ameer Ali, *op. cit.*, p. 290).

The above right vested in the minor is called the *Option of Puberty*.

CHAPTER XVII

POLYGAMY IN ISLAM

We have seen that polygamy was prevalent among all the nations of antiquity, and is even now unrestricted among the Hebrews and the Buddhists. We have also observed the state of Arabia before the advent of Islam—its gross sensuousness and depravity. Let me give you the law of the Qur'an on this subject:—

(a) "And if you fear that you will not act equitably towards orphans, then marry such women as seem good to you, *two, three and four; but if you fear that you will not be able to treat them (both women) honourably, then only one or* what your right hands possess. *This is more proper, that you may not deviate from the right course*" (iv. 3).

This is one of the most important verses of the Qur'an. I give below the views of several eminent authorities on this subject. I begin with Muhammad Ali:

(1) "This passage *permits polygamy under certain circumstances, it does not enjoin it nor even permit it unconditionally*. It is admitted that this chapter (entitled *An-nisa*, or *Women*) was revealed to guide the Muslims under the conditions which followed the battle of Uhud, and the last portion of the last chapter deals with the battle. Now in that battle seventy men out of seven hundred Muslims had been slain, and this disaster had largely de

[illegible]

an exception, not a rule, and as an exception it is a remedy for many of the evils especially prevalent in European society. It is not only the preponderance of females over males that necessitates polygamy in

[illegible]

Ali, *op. cit.*, pp. 199–200).

Taking the above [illegible]

[illegible]

the resulting [illegible]

i. That marriage with more than one wife is merely *permissible*. (It was [illegible] at Uhud.)

ii. That the number of wives a man can have at the same time is limited to four (*[illegible] polygamy*).

iii. That where the husband feels that he cannot do justice to more than one wife, he must [illegible] *monogamy* [illegible] the same time [illegible] the above in verse iv. 3).

iv. That it is [illegible] from [illegible]

the [illegible] *although it may* [illegible] *to* [illegible] (clear from verse iv. 129).

(iv) [illegible] *ought to* [illegible] *them impartially.*

(v) [illegible] *proper that a man have* [illegible] *wife* [illegible] *he may* [illegible] *from the right course* [illegible] *of impartiality and equity.* This [illegible] *Islam indeed* [illegible] *unequivocally* [illegible] *depreciates polygamy,* [illegible] *as follows* –

(vi) *That it is* [illegible] *between the animal states of* [illegible] *and* [illegible] *is* [illegible] *from Howard cited below* :—

(a) 'Where polygamy exists it is sometimes the chiefs alone who are permitted to have a plurality of wives. Besides, just as in the case of peasantry, almost everywhere it is confined to a very small part of the people, the majority being dependent. It is so among Mohammedan peoples in Asia and Europe, as well as in Africa.' Next to the 40 per cent. of the Mohammedans of India, for instance, it is said to be 'negligible' and in Persia it is reported only 'two per cent. of the population enjoy the questionable luxury of a plurality of wives'. Howard, *History of Matrimonial Institutions*, vol. i. p. 142 and Amir Ali, *Mahomedan Law*, vol. i. pp. 24 sq.

(b) 'Hence Mohammed restricted polygamy by *limiting* the maximum number of contemporaneous marriages and *by making absolute equity towards all obligatory in the man.* It is worthy of note that the clause in the Koran (iv. 3) which contains the permission to contract four contemporaneous marriages is immediately followed by a sentence which cuts down the

importance of the preceding passage is twofold and fundamental. The former passage says 'You may marry two, three or four wives, but no more'. The subsequent passage says: 'But if you cannot deal equitably and justly with all, you *shall marry only one*'. In extreme importance of this provision bearing especially in mind the meaning which is attached to the word *equitably* and the fact that it is a term of the Muslim world. (Ameer Ali, *Mohammedan Law*, vol. ii, p. 42).

'The Muhammadan law in this respect contemplates monogamy as the ideal to be aimed at by the husband. A man the right to have more than one wife, but not exceeding four, at one and the same time, provided he is able to deal with them equally and justly. The restriction of Islamic legislation which is of certain moral duties to be strictly enforced by the community, particularly in the long-drawn sacrifices as necessarily to marriage in social and individual life at all times'. (Abdur Rahim, *op. cit.*, pp. 327–8).

It is suggested that the above Quranic texts, supplemented by the views of certain well-known authorities, contravene the charge. But is such a view by the ignorant that Islam enjoins polygamy or that it sanctions unrestricted polygamy. Nor again, in my submission, has it contributed to the betterment of society with greater success than Islam. Why? Because the laws of Islam are *practical*, they have been framed with an eye to meet both the normal and abnormal needs of human society. They are applicable to all states of society from the purely primitive to the highly civilized. Their very elasticity has been the chief cause of the success of Islam.

[illegible] existed in Islam [illegible] to the following verse, [illegible] the class [illegible] of such prohibition) —

> [illegible] except those whom your right [illegible] [illegible]
>
> (iv. 24)

[illegible] adopting generally the marriage [illegible] to marry a woman [illegible] is also lawful for [illegible] *already married to another* [illegible] However, [illegible] *the* [illegible] meant female captives of war. [illegible] marriage with such women as [illegible] even though they may be *married to* [illegible] of their capture provided they [illegible] Muhammad Ali, *op. cit.*, p. 207).

CHAPTER XVIII

DIVORCE IN ISLAM

A [illegible] divorce. What [illegible] the Qur-ân on this burning topic?

(a) "And [illegible] between the [illegible] in [illegible] the [illegible] and [illegible] will [illegible] between them [illegible] Knowing, Aware". (iv. 35).

[illegible] the husband [illegible] in his wife [illegible] the [illegible] appeal [illegible] to [illegible] Should the [illegible] be [illegible] Allah would [illegible] the [illegible] are [illegible] may be [illegible] against [illegible]

It is clear from this verse that [illegible] is at [illegible] the Qur-ân, and [illegible] appeal to [illegible] difficulties than [illegible] act which [illegible] unhappiness to both afterwards.

(b) "Those who swear that they will not go in to their wives should wait four months; if they go back, then Allah is surely forgiving, Merciful" [illegible]

By "going back" is meant the re-establishment of conjugal relations. If before the expiry of the period mentioned,

the husband and wife resume marital relations, then Allah is willing to forgive the faults of the husband and wife.

> And if they have resolved on a divorce (*Talaqa*), then Allah is surely Hearing, Knowing (p. 227).

Muhammad Ali commenting on the above verse says:

> "*Talaqa* is an imperative noun from *Talaqa* [illegible] a woman meaning [illegible] *become separated from her husband* [illegible] *of the marriage tie.*"

Divorce is one of the institutions of Islam regarding which many misunderstandings prevail, so much so that even the Islamic law as administered in the British Courts in India, is not free from such misrepresentations. The chief features of the Islamic law of divorce are dealt with in the Holy Quran, while some further particulars are dealing with the Holy Prophet. It may also be stated that the Islamic law has many points of resemblance when compared with both the Jewish and Christian laws as formulated in *Deuteronomy* and *Matthew*. The chief feature of improvement is that the wife can claim a divorce according to the Islamic law, neither Moses nor Christ conferring that right on the woman, though it is to be regretted that this very feature is the one that is not recognized in India. And the feature of divorce is that it is elastic and does not strictly limit the cause of divorce. In fact, if the civilized nations of Europe and America, who own the same religion, are at the same stage of advancement, and have an affinity of feeling on most social and moral questions, cannot agree as to the causes of divorce, how could a universal religion like Islam, which was meant for all ages and all countries for people in the lowest grade of civilization as well as those at the top, limit these causes, which must vary with the varying conditions of humanity and society. It may also be added here that, though divorce is allowed by Islam if sufficient cause exists, yet the right is to be exercised under

except in certain instances. The Quran is still approved of the Holy Prophet's action when Zaid had divorced his wife, but with a blending of a feeling of compassion for a sinking (XXXIII 37). And the Holy Prophet's memorable words, *of all the things which have been permitted, even divorce is the most detestable* (reported by Abu Dawud), will always act as a strong check on any loose interpretation of the words of the Holy Quran. There are also other traditions given by Bukhari in which, as actually pronounced, divorce is to be avoided. Muhammad Ali, *op. cit.*, p. 1[illegible]

> *di* "And the divorced women should keep themselves in waiting for three courses, and it is not lawful for them that they should hide what Allah has created in their wombs, if they believe in Allah and the last day; and their husbands have a better right to take them back in the meanwhile if they wish for reconciliation; and they (women) have rights similar to those against them in a just manner, and the men are a degree above them (meaning physically), and Allah is Mighty, Wise", (ii. 228).

"The period of waiting or *iddat*, forms the *first* condition in the Islamic law of divorce. But for cases in which a marriage is not consummated, no period of waiting is necessary (as is clear from XXXIII 49). The period of waiting is really a period of temporary separation, during which conjugal relations may be re-established. This period of temporary separation serves as a check upon divorce, and it is the *second* point mentioned by the Quran. This is the best safeguard against a misuse of divorce, for in this way only such unions would be ended by divorce as really deserve to be ended, being devoid of the fairest spark of love. Thus, while the Islamic law of divorce makes every possible provision for love to assert itself, it requires the dissolution of the marriage when it is proved

[illegible]

[illegible] (Muhammad Ali, [illegible] pp. [illegible] and [illegible] Ameer Ali, *Mahomedan Law*, vol. ii, pp. 523-560.)

CHAPTER XIX

DIVORCE IN ISLAM
(Continued)

(c) "Divorce may be *pronounced* twice; then keep [illegible] in good relationship or let them go with kindness, and it is not lawful for you to take back any part of what you have given them, except when fear that they cannot keep within the limits of Allah; then if you fear that they cannot keep within the limits of Allah *there is no blame on them in what she gives up to become free thereby*. These are the limits of Allah, so do not exceed them and whoever exceeds the limits of Allah, these it is that are the unjust" (ii. 229).

A very important verse indeed!

"Like *that* rule regarding divorce is that the *revocable* divorce of the previous verse can be pronounced only twice. In the days of ignorance, a man used to divorce his wife and take her back within the prescribed time even though he might do this a thousand times (as we have noted above). "Islam reformed this practice by allowing a revocable divorce twice, so that the period of waiting in each of these two cases might serve as a period of temporary separation during which conjugal relations could be re-established. The *fourth* point is that the husband must make his choice after the second divorce either to remain for permanently or to bring about a final separation. Thereby the marriage which is not

[illegible] *[illegible]* [illegible]

[illegible]

[illegible]

[

the [illegible] of a [illegible] the early Muslim [illegible] a right [illegible] a right which is maintained in many Islamic [illegible] (Muhammad Ali, *op. cit.*, p. 106; Ameer Ali, *Mahomedan Law*, vol. ii. pp. 567-578).

The words *if you fear* evidently refer to the property [illegible] and as bearing on to the [illegible] point with regard to the law of divorce, viz. that the authorities concerned in the matter and [illegible] should be satisfied in which a wrong doer by one of divorce [illegible] by the authorities. (Muhammad Ali, *op. cit.*, p. [illegible])

The last point to be noticed in connection with the above verse (ii. 229) is that Allah wishes to give heed to the limits He has imposed, and if either does so then he or she is unjust.

> 230. So if he divorces her (for the third time) let it be lawful to him afterwards until she marries another husband, then if he divorces her then there is no blame on them both if they return to one another by marriage, if they think they can keep within the limits of Allah and these are the limits of Allah which He makes clear for a people who know." (ii. 230)

After the irrevocable divorce is pronounced the husband cannot remarry the divorced wife until she has been married elsewhere and divorced, and this is the *sixth* point with regard to the law of divorce. The verse also says the immoral custom of *nikah*, a temporary marriage, is at an end, with no other object than that of legalizing the divorced wife for the first husband, a custom prevalent in the days of ignorance, but abolished by the Holy Prophet according to a report which speaks of his having cursed those who indulge in the evil practice. There must be a period between each divorce. *This restriction make the third pronouncement of*

I have dealt at some length with *iddat* by the husband

vol. ii. p. 578).

part of her dower.

[illegible] the [illegible] of Muhammad. *If [illegible] be [illegible] [illegible] husband.*' (Ameer Ali, *op. cit.*, vol. ii, p. 581).

[illegible] the wife [illegible] *talaq* [illegible] wife by the husband.

[illegible] whether [illegible] after marriage [illegible] and the wife should have liberty to [illegible] [illegible] of the [illegible] nature [illegible] to the policy of the Muhammadan law. [illegible] the wife [illegible] to the policy of the [illegible] the power [illegible] to the husband. *The power [illegible] and [illegible] against [illegible]* Mulla, *op. cit.*, p. [illegible]; Ameer Ali, *op. cit.*, pp. 584–5, and Abdur Rahim, *op. cit.*, p. [illegible].

This power of the wife [illegible] as *Tafwid*, and is a very important power [illegible].

To sum up the principles of the law of divorce in Islam are as follows :—

(a) Islam recognizes the necessity [illegible] is desirable for the [illegible] the general happiness of humanity.

(b) Islam does not give absolute power to the husband to divorce his wife. Various limitations have been placed on the exercise of such power by him.

(c) The true spirit of Islam is against the exercise of this power without sufficient cause. The Prophet's con-

would like to flout the law

[illegible]

[illegible] Hindu [illegible] Roman [illegible] assert that in Islam [illegible] does the ordinary man and woman [illegible] appears. But in spite of the permission to have recourse to divorce it is very rarely taken advantage of, and Muslim marriages are, on the whole, quite successful and harmonious.

CHAPTER XX

REMARRIAGE OF WIDOWS AND DIVORCEES

THE following verse enables *divorced women* to remarry :—

(a) "And when you have divorced women and they have ended their term (of waiting) then do not prevent them from marrying their (respective) husbands when they agree among themselves in a lawful manner . . ." (ii. 232).

The right of maintenance of a divorced woman during her *iddat* has been dealt with in the subsequent chapter on the "Proprietary and Personal Rights of Women."

The permission for *Widows to remarry* is contained in the following verses :—

(a) "And (as for) those of you who *die* and leave wives behind, they should keep themselves in waiting for four months and ten days, then when they have fully attained their term there is no blame on you for what they do for themselves in a lawful manner, and Allah is aware of what you do", (ii. 234)

(b) "And there is no blame on you respecting that which you speak indirectly in the asking of (such) women in marriage or keep (the promise) concealed within your minds . . ." (ii. 235)

REMARRIAGE OF WIDOWS AND DIVORCEES

The permission for widows to remarry was denied as of right in the days of ignorance. As we have seen, the heirs of the deceased man inherited his widows. All this, Islam reformed by giving to the widow the right to choose her own spouse without interference from the heirs. Her rights of inheritance are dealt with in the following chapter.

The reason for the waiting is that the divorced woman or the widow may be pregnant, in which case the period is extended to the time of delivery. There should be no doubt as to who the real father of the child is, which is necessary in determining questions of inheritance and other rights of personal succession.

CHAPTER XXI

INHERITANCE

[illegible] we [illegible] the following verse from the Qur-ân —

> [illegible] children, the male [illegible] the share of two females; but if they are [illegible] more than two, then they [illegible] two-thirds of what the deceased has left; and if there is only one [illegible] and each of them [illegible] one-sixth of what he has left, if he has a child; but if he has no child and the two parents inherit [illegible] then his mother shall have the *third*; but if he has brothers, then his mother shall have the sixth, after the payment of a bequest he may have bequeathed or a debt. (iv. 11)

When the *daughters* are the only heirs they are entitled to a share of two-thirds. The share of two-thirds to which more than two daughters are entitled represents the same even when the daughters are two only, and in practice they have always been proved to be entitled to two-thirds of the property. This is not so evident from the passage of two sisters who are entitled to two-thirds of the property when they are the sole heirs (iv. 177). As to those different cases in which there are others who inherit along with them they are also considered in this verse and in that which follows. Where the deceased is survived by parents, the parents first

[illegible]

Ali, *op. cit.*, p. 202).

[illegible]

(from Allah and Aya [illegible]

(iv, 12).

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

heirs are jealously guarded

[illegible]

must first be paid

[illegible]

than those of men

[illegible]

[illegible] the [illegible] today. [illegible] today, it is [illegible] Hindu law, the latter allows the widow [illegible] *a life interest* in the property [illegible] *after the death* and on [illegible] Again, *under* Jewish law *the daughter* [illegible] *on the death of the* [illegible] and even [illegible] in order [illegible] [illegible] to women better [illegible] than [illegible]

CHAPTER XXII

PROPRIETARY AND PERSONAL RIGHTS OF WOMEN

(a) "O you who believe! do not devour your property among yourselves falsely, except that it be by trading by your mutual consent, and do not kill your people; surely Allah is Merciful to you. (iv. 29)

Though the words are general yet the verse is especially directed to guard women's rights to property, for usually it was the woman whose property was usurped, and this unjust aggression is forbidden, as is also clear from the following verses:—

(b) "And whoever does this aggressively and unjustly, We will soon cast him into fire, and this is easy to Allah". (iv. 30).

(c) And do not covet that by which Allah has made some of you excel others. Men shall have the benefit of what they earn, *and women shall have the benefit of what they earn*, and ask Allah of His grace; surely Allah knows all things. (iv. 32)

The verses clearly establish the separate ownership of property, whether married or not, and men are enjoined not to deal unfairly with their property. If unmarried, her relatives or guardians must preserve it for her, and if married, the husband should not regard her property as his own. If by her

[illegible] *forma sale.* Abdur Rahim say

> [illegible] property [illegible] property [illegible] duty [illegible] to [illegible] overture. That [illegible] *affected* to *no* [illegible] *affected by* [illegible] contracting [illegible] (Abdur Rahim, *op. cit.*, p. 335.)

[illegible] the position of the wife and the mother has been [illegible] from the following rights which she possesses :—

(a) *Right of Mother to Custody of Infant Children*

'The mother is entitled to the custody of her *male child* until he has completed the age of seven years, and of *female child* until she has attained puberty. [illegible] right is not lost though she may have been [illegible] husband.' (Mulla *Mahomedan Law*, [illegible] and Ameer Ali, *Mahomedan Law*, vol. II, pp. 293–4).

(b) *Right to Maintenance*

'[illegible] right corresponding to that of the [illegible] to the fulfilment of his marital [illegible] also entitled to be provided

[illegible]

(c) Dower—a Debt.

[illegible]

[illegible]

(pp. 179-181-2).

(d) *Maintenance during Iddat*

(1) And for the divorced women, provision must be made according to usage, as a duty on those who guard against evil. (p. 24).

It seems that the Qur'an also allows *maintenance to widows for a year* before their right to inherit is taken from the following verse:—

(2) 'And those of you who die and leave wives behind (making a bequest in favour of their wives of main-

> [illegible] maintenance for a year without turning them out. then if they themselves go away there is no blame on you for what they do of lawful deed [illegible] and Allah is Mighty, Wise ", (ii. 240).

[illegible] the [illegible] regard it as having been abrogated by [illegible] verses. Muhammad Ali however is of the opinion that the [illegible] has not been abrogated by any other verse in the Qur'an. On the contrary he believes that this verse is in the nature of an *additional* provision for the widow (Muhammad Ali [illegible] p. 112 and Mulla *op. cit.*, p. 174).

CHAPTER XXIII

CONCLUSION

[illegible] Ameer Ali says:—

> [illegible] legislation [illegible] that the position of women under the Islamic laws is one of [illegible] security and [illegible] protection."

One of the great results of the new legislation, [illegible] was to raise women in the scale of civilization by elevating their moral and social position and giving the widow, the mother, the daughters and sisters, heritable rights. [illegible] The Prophet's latest counsel as one of the essential teachings of his creed: *Respect women*, and his followers, [illegible] in accordance with his precepts, [illegible] daughter, Fatima, [illegible] the Lady of Paradise (*Khatoon Jannat*), as the representative of her sex. [illegible] Mohammed solved the woman question in his system [illegible] they have become possessors of the world's [illegible] the value of women will be [illegible] fully appreciated [illegible] *He placed them on a footing of perfect equality with men in the exercise of civil and legal powers and [illegible]* (Ameer Ali, *Mohammedan Law*, vol. [illegible], pp. 24[illegible])

Among the Arab women were [illegible] It cannot be denied that *the Qur'an gives women the right to appear in public*, as the following verses clearly show:—

(a) "And [illegible] to the [illegible] women that [illegible] [illegible] *them not* [illegible] [illegible] *may be* [illegible] that [illegible]

[illegible]

(xxiv. 30)

Here we get [illegible] Both are [illegible] private parts. [illegible] in public there would [illegible] *men'* to cast down [illegible] less. Muhammad Ali, [illegible] remarks —

To guard the relations [illegible] check [illegible] free intermingling [illegible] now [illegible] requires both sexes to [illegible]

But women [illegible] injunction [illegible] ornaments [illegible] the beauty [illegible] applied [illegible] same [illegible] *them not* [illegible] *may be* [illegible] that [illegible]

[illegible] pp. 201–4)

[illegible] proves that women [illegible] to Muslim society. To take but a few [illegible] we [illegible] that the Empress [illegible] was [illegible] accomplished poetess and [illegible] provided with that much [illegible] Under the Abbasides [illegible] and even com[illegible] presided [illegible] gave [illegible] Shaikha [illegible] lectured in Baghdad [illegible] most famous lady [illegible] who was a pupil of [illegible] and she was [illegible] women were [illegible] Granada and [illegible] were [illegible] and the sciences [illegible] as Nazhun [illegible] Hesa Sawa and Marra [illegible] pp. 199–201, and [illegible]

The system of seclusion existing [illegible] among Muslims [illegible] Ameer Ali [illegible] did not come into vogue until the reign of the Omayyade Walid II. Borrowed originally from the Persians and the Byzantines its practice became

common owing to the character and habits of the sovereign. It is an historical fact that the custom of secluding women prevailed among most nations of antiquity. The Athenians (as we have noticed before) certainly observed it in all its strictness. In later times it found its way among the Byzantines, who claimed to be inheritors of Athenian culture. From them it descended to the Russians, among whom it was maintained with ludicrous rigour until Peter I abolished it by his usual drastic methods. . . . Taken as a whole, woman's condition is not more unfavourable than that of many European women. Her comparative backward condition is the result of want of culture among the community generally rather than of any special feature in the Islamic laws or institutions. *Her legal status is decidedly superior to that of European women.* The social immunities she enjoys allow the fullest exercise on her part of the powers and privileges which the law gives to her. She acts, if *sui juris*, in all matters which relate to herself and to her own property in her own individual right without the intervention of father or husband. She appoints her own attorney, and delegates to him all the powers which she herself possesses. She enters into valid contracts with her husband and her male relations on a footing of perfect equality. If she is ill-treated, she has the right to have the marriage tie dissolved. She is entitled to pledge the credit of her husband for the maintenance of herself and her children. She is able, even if holding a different creed from that of her husband, to claim the free and unfettered exercise of her own religious observances. If the husband is possessed of means, he is bound to place at his non-Muslim wife's disposal some conveyance to take her to her usual place of worship. He is debarred from molesting her in the smallest degree on the exercise of her faith, or depriving her of the custody of her children without valid reason, such as misconduct or tampering with their religion. Her ante-nuptial settlement is her own by absolute right, and she can

deal with it according to her own free-will and pleasure. To become entitled to its enjoyment, she requires no intermediate trustees or next friends. When she is aggrieved by her husband she has a right to sue him in her own individual capacity. Her claim for her ante-nuptial settlement on the estate of her husband has priority over all unsecured debts and she ranks in *pari passu* with secured creditors . . ." (Ameer Ali, *Mahomedan Law*, vol. ii. pp. 25–27).

Where, then, is the degradation of woman in Islam! Rather, the Qur-ân emphasizes:—

(*a*) "And whoever does good deeds, *whether male or female*, and he (or she) is a believer—these shall enter the garden, and they shall not be dealt with a jot unjustly", (iv. 124).

(*b*) "Allah has promised to the believing men *and the believing women* gardens, beneath which rivers flow, to abide in them, and goodly dwellings in gardens of perpetual abode . . ." (ix. 72).

For the first time spiritual, legal, and social equality is conceded to woman, and thus in its treatment of the relationship of man and woman, Islam has given to mankind a code of laws which for their practicality, equity, far-sightedness, and universality remains to this day unparalleled. Its service alone in this respect should earn for it the undying gratitude of humanity. From the very status of a slave, from the very dust beneath man's feet, Islam has raised woman to be man's companion and partner in life. It is a glorious chapter in the history of human progress and civilization!

Blessed is the name of Muhammad, who said: "Paradise lies at the feet of thy Mother." Thus on Woman he bestowed the signal honour of being the true Mother of Humanity and the twin child of Nature!

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